

Received

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STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE WASHINGTON STATE GAMBLING COMMISSION

Gambling Commission  
Comm. & Legal Division

In The Matter Of the Revocation of the  
License to Conduct Gambling Activities  
of:

NICHOLAS A. SNYDER  
Olympia, Washington

Certification No.: 69-20851

OAH Docket No. 2014-GMB-0006  
GMB No. CR 2013-02380

INITIAL ORDER REVOKING  
GAMBLING CERTIFICATION

Administrative Law Judge John M. Gray conducted an administrative hearing in this matter on April 22, 2014, at the Gambling Commission Office, 4565 7<sup>th</sup> Avenue, Lacey, Washington.

Gregory Rosen, Assistant Attorney General, Attorney General's Office, appeared and represented the Washington State Gambling Commission ("Commission"). Special Agent Kevin Maxwell testified on behalf of the Commission.

Nicholas A. Snyder ("Mr. Snyder") appeared at the April 22 hearing. Mr. Snyder testified on behalf of himself.

PROCEDURAL HISTORY

On January 10, 2013, the Commission summarily suspended Mr. Snyder's Class III certification. The Commission suspended Mr. Snyder's license because it had learned that Mr. Snyder had been charged with three counts of unlawful delivery of a controlled substance; specifically, Oxycodone. The charges were Class B felonies.

On January 14, 2014, Ronald Baldwin personally served Mr. Snyder with a copy of the Commission's cover letter, Findings of Fact, Conclusions of Law and Order of

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Summary Suspension of Certification, the Application for Brief Adjudicative Proceeding (Stay Hearing), the Application for Adjudicative Proceedings and Request for Hearing, Request for Interpreter, and numbered case report 2013-02380 with attachments. Mr. Baldwin served Mr. Snyder at the Squaxin Island Little Creek Casino, located at 91 W. State Route 108, Shelton, Washington.

On January 31, 2014, the Commission received Mr. Snyder's Request for Hearing and Interpreter Form. Mr. Snyder requested a hearing and stated that he did not need an interpreter.

On February 12, 2014, the Commission issued a Notice of Hearing to the parties and to the Office of Administrative Hearings ("OAH"). The Notice of Hearing set the hearing for Tuesday, April 22, 2014, starting at 1:30 PM.

The Commission offered Exhibits 1 through 7, which the ALJ admitted without objection from Mr. Snyder.

Mr. Snyder offered no exhibits.

Special Agent Maxwell and Mr. Snyder were sworn before they testified.

After the hearing and before this Initial Order was issued, on May 9, 2014, Assistant Attorney General Rosen notified the ALJ that Mr. Snyder pled guilty to two counts of attempted unlawful delivery of a controlled substance (Oxycodone) based on the Second Amended Information, and his letter included three attachments marked Exhibits A through C.

The ALJ issued a Notice of Intent to Reopen the Record on May 30, 2014, setting a telephonic hearing for Monday, June 9, 2014, at 9:00 AM. The purpose of the hearing was to consider the admission of three additional exhibits that did not exist on

April 22, 2014, offered by the Commission. Assistant Attorney General Rosen appeared at the June 9 telephonic hearing. Mr. Snyder did not appear. The ALJ admitted the Commission's additional exhibits marked as Exhibits 8, 9, and 10.

The Administrative Law Judge, having considered the evidence, now enters the following Findings of Fact:

#### FINDINGS OF FACT

1. Mr. Snyder possesses certification no. 69-20851 authorizing Class III employee activity, issued by the Commission, and worked at the Squaxin Island Little Creek Casino in Shelton, Washington. The certification no. is 69-20851 and is a type 69. Without more, the license will expire on November 25, 2014, at midnight.

2. Kevin Maxwell is a Special Agent employed by the Commission. He has worked for the Commission for over fourteen years. He has had training in his job that includes the law enforcement officer academy and certification as a fraud examiner. He has received training in the use of the Judicial Information System ("JIS") and SCOMIS, data bases containing information about cases in Washington courts and that is provided online through the Administrative Office of the Courts. He is assigned to the Criminal Investigation Unit.

3. Mr. Snyder applied to the Commission to renew his certification, which the Commission received on November 19, 2013. Mr. Snyder disclosed to the Commission that he had been arrested for "unlawful distribution and [was] currently under investigation and going to court to resolve this matter."

4. Based on his research, Special Agent Maxwell learned that the Thurston County Prosecutor filed an Information on May 14, 2013, charging Mr. Snyder with three

counts of unlawful delivery of a controlled substance known as "oxycodone." The alleged statutory violations were of RCW 69.50.401(2)(a). The three counts related to three alleged deliveries that occurred on or about or between February 21, 2013 and February 28, 2013; March 14, 2013 and March 21, 2013; and April 21, 2013 and April 30, 2013. Exhibit 2.

5. The Declaration of Prosecutor Supporting Probable Cause ("Declaration") basically said that an informant had contacted law enforcement, wishing to serve as an informant. The informant named Mr. Snyder as part of a cell of narcotics traffickers. The Declaration described in some detail of an attempted purchase of oxycodone from Mr. Snyder in late February 2013, and briefly mentioned two more attempted purchases of oxycodone from Mr. Snyder in March and April 2013. Exhibit 3.

6. At the time of the April 22 hearing, the trial was set for May 12, 2014. Exhibit 4, page 4; Exhibit 5.

7. The Prosecuting Attorney filed a First Amended Information on April 15, 2014, adding an alleged violation of making the attempted delivery of a controlled substance within one thousand feet of the perimeter of school grounds. Exhibit 6.

8. Mr. Snyder's arraignment was scheduled for April 22, 2014, at 10 AM. Exhibit 7.

9. Mr. Snyder had worked as a table dealer at the Little Creek Casino for over one year when the Commission suspended his certification. Mr. Snyder enjoyed entertaining the guests. He previously worked at the Red Wind Casino for about five or six years. Most of his work experience is in the gambling industry. Testimony of Mr. Snyder.

10. Subsequent to the April 22 hearing, Prosecuting Attorney filed a Second Amended Information on May 6, 2014, charging Mr. Snyder with two counts of attempted unlawful delivery of a controlled substance (specifically oxycodone)(RCW 69.50.401(2)(a)), and with attempted delivery of participation in a conspiracy to commit any offense defined in ch. 69.50 RCW (RCW 69.50.407). Both offenses are class B felonies. Exhibit 8.

11. Mr. Snyder pled guilty to the offenses set forth in the Second Amended Information on May 6, 2014. In his own words, Mr. Snyder wrote what he did to make him guilty of the crimes: "On or about February 21, 2013 and March 14, 2013, with the intent to commit the crime of unlawful delivery of a controlled substance, oxycodone, I took substantial steps toward the commission of the crime of unlawful delivery of a controlled substance, oxycodone." Exhibit 9, page 9.

12. The sentencing hearing is scheduled for June 25, 2014. Exhibit 10.

#### CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Administrative Law Judge now enters the following Conclusions of Law:

1. The Commission personally served the Commission's cover letter, Findings of Fact, Conclusions of Law and Order of Summary Suspension of Certification, the Application for Brief Adjudicative Proceeding (Stay Hearing), the Application for Adjudicative Proceedings and Request for Hearing, Request for Interpreter, and numbered case report 2013-02380 with attachments, on Mr. Snyder on January 14, 2014. Mr. Snyder requested both a hearing on the merits. The Commission received Mr. Snyder's request for an adjudicative hearing on January 31,

2014, seventeen days after personal service on Mr. Snyder. WAC 230-17-010(2)(a) requires that the Commission receive the licensee's request for hearing within twenty days after personal service of the documents described above on Mr. Snyder. The twentieth day after service on Mr. Snyder was Monday, February 3, 2014. Therefore, Mr. Snyder timely filed his request for a hearing on the issues raised in the Findings of Fact, Conclusions of Law and Order of Summary Suspension of Certification.

2. The Office of Administrative Hearings has jurisdiction to hear and initially decide this matter in an adjudicative proceeding. RCW 9.46.140; 34.05.413, 34.12.030(1), and WAC 230-17-025.

3. As of the date of the April 22 hearing, Mr. Snyder's certification was suspended pursuant to a valid Order.

4. The Commission bases its proposed revocation of Mr. Snyder's certification on the provisions of RCW 9.46.075(1), (4), (8), and (9); RCW 9.46.153(1) and WAC 230-03-085(1). Additionally, Mr. Snyder's certification is subject to revocation on the provisions of WAC 230-03-085(3) and (8)(b). Conclusions of Law No. 5 through 8 contain the applicable language of these statutes and administrative rules.

5. RCW 9.46.075 is the Commission's legislative grant of authority to deny, suspend, or revoke gambling licenses or permits. "The commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein:

(1) has violated, failed or refused to comply with the provisions,

requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the commission pursuant thereto, or when a violation of any provision of chapter 9.46 RCW, or any commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control;

...

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude;  
[Emphasis supplied.]

...

(8) fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of [chapter 9.46 RCW];

(9) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (4) of this section:  
PROVIDED, That at the request of an applicant for an original license, the commission may defer decision upon the application during the pendency of such prosecution or appeal[.]

6. RCW 9.46.153(1) is a statute containing a separate statement of RCW

9.46.075(8):

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted[.]

7. "Clear and convincing evidence" is a higher burden of proof than "preponderance of the evidence." See, *Hardee v. Department of Social and Health Services*, 172 Wn.2d 1, 6-18, 256 P.3d 339 (2011).

8. The Commission also relies on its administrative rules. WAC 230-03-085 states in plain language when the Commission will deny, suspend, or revoke an application, license or permit. "We [referring to the Commission] may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

(1) commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075;

...

(3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level;

...

(8) poses a threat to the effective regulation of gambling, or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by

(b) Criminal record[.]

9. Mr. Snyder pleaded guilty in 2014 to two violations of attempted delivery of a controlled substance and two violations of conspiring to an attempted delivery of a controlled substance, the controlled substance being oxycodone in both violations. Consequently, Mr. Snyder's conviction comes with the scope of the final clause of RCW 9.46.075, "any crime, whether a felony or misdemeanor." [Emphasis supplied] The real question in this case is whether the crimes to which Mr. Snyder pleaded guilty involve "moral turpitude."

10. Moral turpitude has been defined in Washington law. "A crime involves moral turpitude if it is an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men or to society in general." *Seattle v. Jones*, 3 Wn. App. 431, 437, 475 P.2d 790 (1970). Further, "without doubt, by contemporary community standards possession and sale of narcotics, unless authorized by law, is a crime which by its very nature involves 'moral turpitude.' Crimes which involve moral turpitude are categorized as crimes mala in se." *State v. Hennings*, 3 Wn. App. 483, 489, 475 P.2d 926 (1970).

11. I conclude that the crimes to which Mr. Snyder pled guilty were crimes of moral turpitude. Oxycodone is a controlled substance under the Uniform Controlled Substances Act, ch. 69.50 RCW. At the time this administrative case went to hearing, charges were pending. Subsequently, Mr. Snyder pled guilty to two counts violating four statutes in chapter 69.50 RCW and, in his own words, admitted his guilt. I conclude that the Commission has proved by a preponderance of the evidence that Mr. Snyder violated RCW 9.46.075(1) and (4). RCW 9.46.075(9) was subsumed in subsection (4)

upon Mr. Snyder's plea of guilty. I conclude that the Commission has proved by a preponderance of the evidence that Mr. Snyder violated WAC 230-03-085(1), (3), and (8).

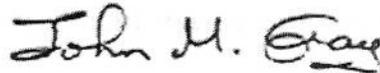
12. I conclude that Mr. Snyder has failed to prove by clear and convincing evidence that he has the necessary qualifications for licensure under the provisions of chapter 9.46 RCW. The fact that he pled guilty to crimes involving moral turpitude shows that he lacks those qualifications. The Commission has an understandable interest in keeping convicted felons from working in the gambling industry in this State.

13. I conclude that Mr. Snyder's certification should be revoked based  
From the foregoing Conclusions of Law, NOW, THEREFORE,

INITIAL ORDER

IT IS ORDERED That the Mr. Snyder's certification, number 69-20851, is **REVOKED**.

DATED at Tacoma, Washington, this 17<sup>th</sup> day of June, 2014.



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John M. Gray  
Administrative Law Judge  
Office of Administrative Hearings

NOTICE TO THE PARTIES

Initial orders must be entered in accordance with RCW 34.05.461(3). WAC 230-17-085(1). An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC 230-17-090. WAC 230-17-085(2). Petitions for review are governed by WAC 230-17-090:

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"RCW 34.05.464 governs the review of initial orders." WAC 230-17-090(1).

"Any party to an adjudicative proceeding may file a petition for review of an initial order. Parties must file the petition for review with us within twenty days of the date of service of the initial order unless otherwise stated. Parties must serve copies of the petition to all other parties or their representatives at the time the petition for review is filed." WAC 230-17-090(2).

"Petitions must specify the portions of the initial order the parties disagree with and refer to the evidence in the record on which they rely to support their petition." WAC 230-17-090(3).

"Any party to an adjudicative proceeding may file a reply to a petition for review of an initial order. Parties must file the reply with us within thirty days of the date of service of the petition and must serve copies of the reply to all other parties or their representatives at the time the reply is filed." WAC 230-17-090(4).

"Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us." WAC 230-17-090(5).

"Copies of the petition or the cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed." WAC 230-17-090(6).

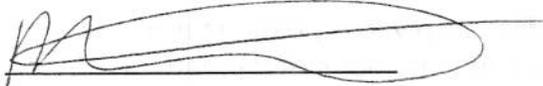
"After we receive the petition or appeal, the commissioners review it at a regularly scheduled commission meeting within one hundred twenty days and make a final order." WAC 230-17-090(7).

**Certification of Mailing**

I certify that I mailed true and correct copies of the **Initial Order Revoking Gambling**

**License** to the following parties, postage prepaid this 17 day of June 2014 at

Tacoma, Washington.



Melanie Barnhill

Legal Secretary

Nicholas A. Snyder  
900 East Bay Drive NE, Apt. A303  
Olympia, WA 98506-0721

Gregory J. Rosen  
Assistant Attorney General  
Office of the Attorney General  
PO Box 40100  
Olympia, WA 98504-0100

Washington State Gambling Commission  
Communications and Legal Department  
PO Box 42400  
Olympia, WA 98504-2400

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